

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

MARYELLEN ERNST,

Complainant,

and

HAWAII HEALTH SYSTEMS  
CORPORATION; and KONA  
COMMUNITY HOSPITAL,

Respondent.

CASE NO(S). 21-CE-13-956

ORDER NO. 3682

PRETRIAL ORDER AND NOTICES

- (1) NOTICE TO RESPONDENT(S) OF PROHIBITED PRACTICE COMPLAINT;
- (2) NOTICE TO PARTIES OF EXTRAORDINARY CIRCUMSTANCES
- (3) NOTICE OF FILING REQUIREMENTS;
- (4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS;
- (5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD
- (6) NOTICE OF PREHEARING CONFERENCE
- (7) NOTICE OF PRETRIAL CONFERENCE
- (8) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY
- (9) NOTICE OF HEARING ON THE MERITS; AND
- (10) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

**PRETRIAL ORDER AND NOTICES**

THE PARTIES ARE NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose

appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document controls the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns include the others as the context may require.

**(1) NOTICE TO RESPONDENTS OF A PROHIBITED PRACTICE COMPLAINT**

The attached prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **January 11, 2021.**

PER HAWAI'I REVISED STATUTES (HRS) § 377-9(b) AND HAWAI'I ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

YOU ARE DIRECTED to file a written answer to the Complaint within ten (10) days after service of the Complaint. One copy of the answer must be served on each party, and the original with certificate of service on all parties must be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, that failure is an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

**(2) NOTICE OF EXTRAORDINARY CIRCUMSTANCES**

Due to the current concerns regarding COVID-19, the Governor of the State of Hawai'i (Governor) issued a series of Emergency Proclamation, with the first being signed on March 5, 2020. These proclamations, among other things, gave agencies the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at the same location, and suspend certain rules, statutory requirements, and administrative hearing procedures as needed to deal with the emergency situation brought on by COVID-19.

On March 29, 2020, the Governor issued Executive Order No. 20-02, which, among other things, gave the Board the sole discretion to waive the requirement in HRS § 377-9 to hold a hearing on the complaint not more than 40 days after the filing of the complaint or any amendment to a complaint. The Board waives this requirement in this case.

The Board is holding remote, videographic hearings and is mandating electronic filing during the emergency period, unless terminated by separate proclamation, whichever occurs first. (See Order Nos. 3605 and 3647)

### **(3) NOTICE OF FILING REQUIREMENTS**

#### **1) Electronic Filing**

**All filings in this case must be made electronically through the Board's filing service FileandServeXpress (FSX).** There is no charge to the parties for use of this electronic filing service. If any party does not have access to the Internet, or for any other concerns or complications, please contact the Board via electronic mail or (808) 586-8616.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrb/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

#### **2) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information**

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party must make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" includes social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board's consideration of this case, the submitting party must submit the confidential information through a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party must, by motion, request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, per HAR § 12-42-8(g)(11), "The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document."

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

**(4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS**

All parties have the right to appear and to be represented by counsel or any other authorized person in all Board proceedings, subject to the Extraordinary Circumstances set forth in Section (2) above. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The parties should be aware that the Board is in a secured State of Hawai‘i building, which may not be accessible to the public during the emergency period referenced in the Notice of Receipt of Notice of Contest.

**(5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD**

The Board currently uses Zoom as its platform for online proceedings. The Board orders all parties to follow the requirements laid out in this Order for all Remote Zoom Hearings before the Board.

Parties and representatives should familiarize themselves with Zoom in preparation for all online Board proceedings. For security purposes, the Board will utilize the “waiting room” function.

Prior to the hearing:

1. The Board will provide Zoom login information to the parties in advance of the hearing.
2. A party who shares the Zoom login information with any other group or individual (Sharing Party) must provide the Board and the other party/parties with a complete list of participants they have invited to attend the proceedings, including any support staff and witnesses. At least 24 hours prior to the hearing, the list must be emailed to the Board at [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov).
3. Any Sharing Party must inform non-witness participants:
  - 1) that they must keep their microphones muted at all times; and
  - 2) that they must keep their cameras off at all times.
4. Any Sharing Party must inform **all** participants:
  - 1) that they must submit their full name as their username when requesting entry to the Zoom conference, to allow the Board to ensure compliance with the witness

exclusion rule, unless the party sets up a device specifically for witness use only, in which case that device may log in with the username “witness”; and

- 2) that they may not record, screen shot, record conversations, and/or use third party software to record the proceeding.

**(6) NOTICE OF PREHEARING CONFERENCE**

PER HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

NOTICE IS GIVEN that the Board will conduct a Prehearing Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: January 20, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; to identify witnesses and file applications for the issuance of subpoenas; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing Conference telephonically and to be represented by counsel or any other authorized person. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

**(7) NOTICE OF PRETRIAL CONFERENCE**

PER HRS §§ 89-5(i)(4) and (i)(5), and 377-9:

NOTICE IS GIVEN that the Board will conduct a Pretrial Conference on the date listed below and in the Schedule in this document.

DATE AND TIME: February 11, 2021 at 10:00 a.m.

LOCATION: Remote Zoom Hearing

## 1) Pretrial Statement

**Both the Complainant(s) and the Respondent(s) must file a Pretrial Statement with the Board as listed in the Schedule set forth below.** The Pretrial Statement must include the following:

1. Statement of Issues
2. Witness List

The witness lists must include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability.

The summary for each witness must include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1). The summary, therefore, must include sufficient information to show the Board that the testimony of each witness will be different, and so the summary for each witness must be individualized.

**Failure to include individualized summaries for any witness may be grounds for the Board to strike that witness and not allow them to testify at the *de novo* hearing.**

The witness list must also include information regarding the location where the party expects the witness to testify from. This location may include the witness' home, a party's office, or any other location from which the witness can testify remotely, without assistance or interference from any other party, and can access the relevant exhibits.

If a party intends to file a request for a subpoena for a witness, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the witness list.

3. Exhibit List

The exhibit lists must include copies of the proposed exhibits. The parties are required to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day, as ordered in Board Order No. 3605. The exhibits must be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes, with each exhibit bookmarked.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the exhibit list.

The Complainant must identify his exhibits using alphabetical letters (A, B, C, D, etc.). Union Respondent(s) must identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.).

If there are any duplicative exhibits, the parties must designate them as Joint Exhibits, the parties must designate one party to file these exhibits, and the Exhibits must be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

**All Exhibits are to be bates-stamped in the upper right-hand corner.**

Additionally, the Exclusive Representative, unless no Exclusive Representative is party to the case, in which case the Employer, must submit to the Board the full applicable collective bargaining agreement(s), including any Memoranda of Understanding, Memoranda of Agreement, or any other supplemental agreement that has any bearing on these proceedings. These documents must be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc. and must be bates-stamped in the upper-right hand corner.

## **2) Pretrial Conference**

At the pretrial conference, the Parties must be prepared to discuss, raise, and present their position regarding the presentation of the anticipated evidence (witnesses, exhibits) to be introduced at the Hearing on the Merits (HOM), including but not limited to any stipulations, evidentiary issues, objections, or confidentiality issues that require protection from public disclosure and the narrow tailoring of methods to protect that information (e.g. sealing or redaction).

While all parties have the right to appear at the Pretrial Conference and to be represented by counsel or any other authorized person, all parties are required to either appear or have a representative appear. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

## **(8) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY**

Due to the situation with COVID-19, unless otherwise ordered by the Board, all witnesses must testify videographically. Accordingly, the Board **orders all parties** to inform their witnesses that, unless otherwise directed or allowed, when the witness testifies:

1. The witness must be in a location without anyone else in the room with them, and there should be no one at the location who can overhear their testimony;
2. The device from which the witness appears must be used during the witness' testimony solely for the purpose of the witness appearing by video;
3. The witness may not consult with anyone during testimony;
4. The party calling the witness must ensure that the witness has access to all exhibits in the case;
5. The witness must not look at or make reference to notes or any other documents or materials other than the exhibits, and may look at the exhibits only when directed to do so by a party or the Board;
6. At all times while testifying, the witness must be clearly visible, face the camera, and speak directly and audibly into the microphone;
7. The witness may not use a virtual background; and
8. The witness must not have any communication with third parties while they are on the stand and under oath.

**(9) NOTICE OF THE HEARING ON THE MERITS**

NOTICE IS GIVEN, per HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49 that the Board will conduct an HOM on the instant Complaint at the place, time and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: February 19, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

Subject to the Board's discretion due to the Extraordinary Circumstances listed above in Section 2, all parties have the right to appear at the Hearing on the Merits and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear at the hearing on the merits.** Please note that this requirement may be altered due to the Extraordinary Circumstances listed above in Section 2 by Board Order.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(10) **SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES**

<b><u>DATES AND DEADLINES</u></b>	<b><u>DATE</u></b>	<b><u>TIME</u></b>
<u>Prehearing Conference</u>	1/20/21	9:00 a.m.
<u>Dispositive Motion Deadline</u>	1/28/21	
<u>Response to Dispositive Motion Deadline</u>	2/4/21	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	2/4/21	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	2/11/21	10:00 a.m.
<u>Hearing on the Merits</u>	2/19/21	9:00 a.m.

**All submissions must be filed on or before 4:30 p.m. on the deadline date.**

DATED: Honolulu, Hawai'i, \_\_\_\_\_ January 12, 2021 \_\_\_\_\_.

HAWAII LABOR RELATIONS BOARD



*Marcus R. Oshiro*

MARCUS R. OSHIRO, Chair

*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO, Member

*John Musto*

JOHN MUSTO, Member

Copies sent to:

Maryellen Ernst, SRL

Linda Rosen, CEO, Hawaii Health Systems Corporation

James Lee, CEO, Kona Community Hospital



**EFiled: Jan 11 2021 09:49AM HAST**  
**Transaction ID 66243165**  
**Case No. 21-CE-13-956**

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

**FORM HLRB-4**  
**PROHIBITED PRACTICE COMPLAINT**

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INSTRUCTIONS. Submit the original<sup>1</sup> of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

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1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.
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2. COMPLAINANT Please select one that describes the Complainant:

☒ Public Employee      ☐ Public Employer      ☐ Public Union (public employee organization)

- a. Name, address and telephone number.

Maryellen Ernst  
71-1769 Puu Lani Drive  
Kailua Kona, HI 96740

781 530 0701

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- b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Maryellen Ernst

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<sup>1</sup> Notwithstanding Board rule 12-42-42(b), the Board only requires the original of the complaint.

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3. RESPONDENT Please select one that describes the Respondent:

☐ Public Employee      ☒ Public Employer      ☐ Public Union (public employee organization)

a. Name, address and telephone number.

HHSC  
3675 Kilauea Avenue  
Honolulu, HI 96816  
(808)733-4020  
Kona Community Hospital  
79-1019 Haukapila St  
Kealahou, HI 96750 808 322 9311  
Kealahou, HI, 96750 808 322 9311

b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Linda Rosen CEO HHSC  
3675 Kilauea Avenue  
Honolulu, HI 96816  
808 733 4020  
Jim Lee CEO Kona Community Hospital  
79-1019 Haukapila St  
Kealahou, HI 96750 808 322 9311

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4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

Bargaining unit 13

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5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

Violate the terms of a collective bargaining agreement

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6. Provide a clear and concise statement of any other relevant facts.

I was terminated on May 18, 2020. I sent the Administrative Review to Robert Grasty HR at KCH on June 5th 2020. I took more than 7 weeks for him to respond and he only responded because I called Juanita Lauti (HR) and asked what a reasonable response time would be. I never received anything in writing from Robert Grasty indicating that my termination was final. I did put up with some verbal abuse from Mr Grasty however. I then filed an Internal complaint with Jay Kruezer on July 30 2020 and never received a reply. On September 28 2020 I again reached out to Juanita Lauti via email regarding the seemingly excessive amount of time this process was taking and she responded by asking for the formal termination letter that was supposed to have come from Robert Grasty. I then informed her that nothing was ever forthcoming. Ms Lauti at that time did not even inform me that Jay Kruezer CEO Kona Community Hospital had been replaced by Jim Lee. All she did was suggest I send the information to Robert Grasty HR KCH for review. I informed her that the complaint process was supposed to go forward, not backward. Also, I had filled out a page of complaints regarding Robert Grasty and I did not feel he would respond well.

I learned that Jim Lee was the new CEO by reading a newspaper article. I then re-sent the Internal Complaint form to him on October 6 2020 and nothing has ever been forthcoming. I sent it to Jaunita Lauti as well on that day.

On December 30 2020 at the suggestion of my union representative I sent the Internal Complaint form to Linda Rosen CEO HHSC and again to Juanita Lauti HR.

I did some research on the computer regarding this Review/Complaint/ Merit Appeal and learned that a Merit Appeal could not be filed until the Internal complaint process is complete.

I am filing this complaint because HHSC is not following their own rules, nor the rules set forth by the State of Hawaii and by doing so they are violating my collective bargaining agreement.

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

**DECLARATION IN LIEU OF AFFIDAVIT**

(If the Complainant is self-represented, then the Complainant must sign this Declaration).

Please select one:

- ☒ the Complainant  
☐ the Complainant's principle representative  
☐ the person described below

I, Maryellen Ernst,  
do declare under penalty of law that the foregoing is true and correct.

Date: 01/08/2021

*"/s/ Maryellen Ernst*

*The person signing above agrees that by signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.*

*chongo1100@yahoo.com*

*Signor's email address*

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Your phone number: \_\_\_\_\_

Your relationship to the Complainant:

\_\_\_\_\_

If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then complete the Board Agreement to E-File, FORM HLRB-25. (Form HLRB-25 is on the HLRB Website at [labor.hawaii.gov/hlrb/forms](http://labor.hawaii.gov/hlrb/forms).) Email the completed form to the Board at [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov).